

STATE OF MICHIGAN
COURT OF APPEALS

BULTEMA BROTHERS BUILDERS SUPPLY,
INCORPORATED,

Plaintiff-Appellee,

v

FIFTH THIRD BANK, f/k/a AMERIBANK,

Defendant-Appellant,

and

SCHEPERS INSULATION, INC.,

Defendant-Appellee.

UNPUBLISHED
September 17, 2002

No. 232324
Kent Circuit Court
LC No. 98-000461-CH

Before: Hood, P.J., and Neff and Murray, JJ.

PER CURIAM.

Defendant, Fifth Third Bank f/k/a Ameribank, appeals as of right from a stipulated judgment in favor of plaintiff, Bultema Brothers Builders Supply, Inc., and codefendant and cross-claimant, Schepers Insulation, Inc. (Schepers).¹ We affirm.

Jerry Saurman began construction on a “spec home,” a home that would be utilized as a model home or sold after completion. The spec home was subsequently acquired by Concept One Development, Inc. as evidenced by a warranty deed. However, the notice of commencement, that was drafted by defendant, provided that the owner or lessee was Concept One Development, Inc., and the general contractor was Concept One Homes.² While the notice

¹ Defendant filed a motion for summary disposition in the trial court. Plaintiff opposed the motion and requested summary disposition in its favor pursuant to MCR 2.116(I)(2). The trial court denied the motion in favor of defendant. Plaintiff filed a subsequent motion for summary disposition in its favor that was denied. However, Schepers moved for summary disposition of defendant’s affirmative defenses, and the motion was granted. Consequently, the parties stipulated to facts and a judgment that concluded that plaintiff and Schelpers held valid liens and priority rights over defendant’s mortgage.

² The first physical improvement of construction of the spec home occurred prior to December 5,
(continued...)

of commencement was recorded, there was no indication that the notice of commencement was kept posted on the property. Plaintiff supplied brick to the project. Plaintiff's supply of brick was known to both Saurman and Concept One Development, Inc. because of direct negotiations, and plaintiff did not serve a sworn statement upon the owner. Plaintiff filed a claim of lien for \$6,141.33 when it was not paid for the supply of bricks. Schepers also filed a construction lien based on its supply and installation of insulation products. Defendant loaned \$260,000 to Concept One Development, Inc. and acquired the property through foreclosure. While Glen Van Orman of Concept One Homes submitted sworn statements delineating the subcontractor, supplier, or laborer that had worked on the spec home, the statements were not completed by a notary.

Defendant first alleges that payment is barred because plaintiff and Schepers were contractors that failed to file sworn statements. We disagree. Because the judgment was premised on stipulated facts, we review the decision for errors of law. See *Federal Land Bank v Bay Park Place, Inc.*, 162 Mich App 1, 6; 412 NW2d 222 (1987). Issues of statutory construction present questions of law and receive de novo review. *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). The Construction Lien Act (CLA) is designed to protect the right of all contractors and subcontractors to payment for wages and materials. *Pitsch v ESE Michigan, Inc.*, 233 Mich App 578, 602; 593 NW2d 565 (1999). The CLA is a remedial statute to be liberally construed to secure the beneficial results, intents, and purposes of the act. MCL 570.1302. However, the substantial compliance provision of the act, MCL 570.1302, is to be applied on a case by case basis. *Northern Concrete Pipe, Inc v Sinacola Companies-Midwest, Inc.*, 461 Mich 316, 321; 603 NW2d 257 (1999).

Defendant contends that plaintiff and Scheper cannot recover because they are contractors who failed to comply with the sworn statement provisions of MCL 570.1110. We disagree. Defendant drafted the notice of commencement that specifically provided that two different entities were involved in the ownership and construction of the home. Specifically, defendant listed Concept One Development, Inc. as the owner and listed Concept One Homes as the contractor. Furthermore, review of the definitional sections of the CLA³ reveal that plaintiff and Scheper do not qualify as contractors. Accordingly, defendant's contention is without merit.

Defendant next alleges that the construction liens are subordinate to its mortgage because of the failure to timely provide a notice of furnishing. We disagree. Because of direct dealing,

(...continued)

1996, the date of the notice of commencement prepared by defendant.

³ MCL 570.1103(5); MCL 570.1106(4); MCL 570.1106(5).

see *Bosch v Altman Construction Corp*, 100 Mich App 289, 298-300; 298 NW2d 725 (1980), this claim is also without merit. See also MCL 570.1107(3).

Affirmed.

/s/ Harold Hood

/s/ Janet T. Neff

/s/ Christopher M. Murray